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IN THE

Supreme Court of the United States

October Term, 1996

CIGNA HEALTHCARE OF CONNECTICUT, INC.,

Petitioner,

v.

ROBERT S. NAPOLETANO, ET AL. and
F. BARRETT HOLLIS, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF CONNECTICUT

REPLY BRIEF FOR THE PETITIONER

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Petitioner CIGNA HealthCare of Connecticut, Inc. hereby replies to the brief in opposition ("Opp.") filed by respondents.

1. There is a Clear Conflict Between the Decision Below and Decisions of this Court and Federal Courts of Appeal

Respondents argue that there is no conflict between the decision below and decisions of this Court and other federal courts. They correctly note that the Connecticut Supreme Court invoked this Court's decision in *New York State Conference of Blue Cross and Blue Shield Plans v.*

Travelers Insurance Co., 115 S. Ct. 1671 (1995) to hold that both the *Hollis* and *Napoletano* claims did not "relate to" ERISA-covered employee benefit plans and thus were not preempted by ERISA. (Opp. at 5.) The core of the Connecticut Supreme Court's rationale, however, was that the claims did not "relate to" ERISA plans because, as to *Hollis*, they "merely turn on requiring CIGNA to enforce" a benefit plan (App. 34a) and, as to *Napoletano*, they "simply assert that CIGNA has failed to enforce the employee benefit plan that it administers" (App. 35a). A holding that state law claims may be a vehicle to "enforce" an ERISA-covered plan is directly contrary to this Court's decisions in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987) and *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990), both of which hold that ERISA itself provides the exclusive civil enforcement mechanism for such claims. As argued in the petition and recognized by several federal courts of appeal (Pet. 17-19), the *Travelers* analysis does not apply to such claims and does not affect the validity of *Pilot Life* or *Ingersoll-Rand*. Thus, there is a clear conflict warranting a grant of certiorari between the decision below and decisions of this Court and federal courts.[1]

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[1] The petition also argued that, to the extent the *Hollis* claims alleged misrepresentations to plan participants by administrators of ERISA plans, they were clearly preempted since ERISA itself provides a remedy in such circumstances. (Pet. 12-13, *citing Varity Corp. v. Howe*, 116 S. Ct. 1065 (1996).) Contrary to respondents' misperceptions, petitioner did not argue that *Varity* itself construes ERISA's preemption provisions. The significance of *Varity* is to underline the exclusive nature of the civil enforcement mechanism which provides avenues of relief for respondents under both §§ 502(a)(1)(B) and (a)(3) of ERISA; as *Pilot Life*

There is also a direct conflict between the treatment of the *Napoletano* claims in the decision below and the treatment of a closely parallel claim in *Zuniga v. Blue Cross and Blue Shield of Michigan*, 52 F.3d 1395 (6th Cir. 1995). Respondents argue that *Zuniga* is substantively "inapplicable," apparently on the theory that the majority opinion in the Sixth Circuit "failed to take...into account" the *Travelers* decision, which was issued roughly one week before *Zuniga* and is referred to in the *Zuniga* dissent. (Opp. at 10.) The *Zuniga* majority did not rely on *Travelers* but rather on *Ingersoll-Rand* in holding preempted claims which, like the claims in *Napoletano*, sought "benefits under the plan for...treatment of covered patients." 52 F.3d at 1401. Its apparent conclusion, in the face of the dissent's cite to *Travelers*, that *Travelers* did not govern the preemption analysis merely underscores the conflict between *Zuniga* and the decision below over whether, after *Travelers*, state laws may directly regulate plan administration.

2. The Petition Presents Issues of National Significance on a Record Suitable for Certiorari

Respondents concede, grudgingly, that the issues raised in the petition "are in theory issues of great national concern" (Opp. at 9) and "are of national importance" (*id.* at 17). They argue, however, that these cases are not suitable for certiorari, in part because of imagined defects in the petition and in part because of supposed concessions by petitioner in the court below and alleged "adequate and independent state grounds" for the decision below.

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holds, the existence of this exclusive mechanism requires preemption of parallel state law claims. *Pilot Life*, 481 U.S. at 51.

There were no grounds for the decision below other than the ERISA preemption issue presented in the petition, and respondents identify no such ground. The trial court granted petitioner's motion to strike respondents' claims on the ground that the claims were preempted by ERISA. (App. 65a.) The Connecticut Supreme Court reversed that decision, reinstating the claims. While the Connecticut Supreme Court also decided other state law issues in respondents' favor,[2] the preemption question was dispositive of the claims' legal sufficiency; if the claims had been held preempted by ERISA, their dismissal would have been upheld.[3]

Similarly, the supposed "concessions" by petitioner in the court below were merely recognitions that state common and statutory law that does not directly refer to ERISA plans is not preempted "*per se*" (App. 33a & n.25) and such law is not necessarily preempted as to all aspects of petitioner's business. Where, however, that state law is applied in a way that "relates to" ERISA plans -- as here, to "enforce" those plans -- it is preempted, and review by this Court is necessary and warranted to reestablish this principle.

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[2] Principally, the court held that there was a private right of action to seek declaratory relief under a state statute. (App. 44a.)

[3] Respondents complain that the petition fails to address separately the various claims asserted in *Hollis* (Opp. at 14) and suggest that the petition does not encompass all of the claims in *Napoletano* (*id.* at 9). The Connecticut Supreme Court used a single rationale to hold that *all* claims in both cases were not preempted; the petition presents a question regarding that rationale and encompasses all claims.

CONCLUSION

For the reasons stated here and in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

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